

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CHONGYEE LENGNOU XIONG,) 1: 02-CV-6525-SMS
)
Plaintiff,) ORDER TO DEFENDANT TO INFORM THE
v.) COURT OF ITS POSITION REGARDING
CONSIDERATION OF PLAINTIFF'S LATE
OPPOSITION (DOCS. 30-33)
ANN VENEMAN, Secretary of the)
U.S. Department of)
Agriculture,) **Due Date for Input from**
Defendant.) **Defendant: August 19, 2005**
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)
)

Plaintiff is proceeding with a civil action in this Court.

The matter has been referred to the Magistrate Judge for all proceedings, including the entry of final judgment, pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73(b), and Local Rule 73-301.

On August 4, 2005, one day before the hearing on Defendant's motion for summary judgment, and after the Defendant had already filed a reply, Plaintiff filed opposition to the motion, including a memorandum of points and authorities, a separate statement, and declarations. The opposition was not timely filed. In a declaration regarding late filing, Plaintiff's counsel set forth an explanation for the late filing and requested in the body of the declaration that the hearing be continued to allow

1 Defendant time to reply and for the Court to consider the matter
2 on its merits.

3 Due to the unanticipated unavailability of the Court, the
4 hearing on the motion was continued on August 5, 2005, the
5 morning of the hearing, to September 9, 2005. The Court has
6 suspended substantial resources considering the motion in the
7 posture in which it stood before the filing of the untimely
8 opposition. The Court has not determined whether or not it will
9 consider Plaintiff's untimely opposition and permit Plaintiff to
10 be heard, either on paper or at any hearing, on the merits in
11 connection with the motion for summary judgment. If the Court
12 does ultimately determine to consider Plaintiff's untimely
13 opposition, Defendant will be given adequate time to prepare and
14 file a reply to the opposition.

15 However, before determining whether to consider the late
16 opposition, the Court desires to know the position of Defendant
17 with respect to whether the Plaintiff's untimely opposition
18 should be considered.

19 Accordingly, it IS ORDERED that no later than August 19,
20 2005, Defendant MAY FILE input regarding its position on this
21 matter, including but not limited to a declaration and/or points
22 and authorities.

23 IT IS SO ORDERED.

24 **Dated: August 8, 2005**
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26 /s/ Sandra M. Snyder
27 UNITED STATES MAGISTRATE JUDGE
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